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21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE NORTHERN DISTRICT OF CALIFORNIA
23
24 SAN JOSE DIVISION

25 **IVAN VERNARD CLEVELAND,**

26 Plaintiff,

27 v.

28 **BEN CURRY, Warden, et al.,**

29 Defendants.

30 C 07-2809 JF (PR)

31 **DEFENDANTS' NOTICE OF
MOTION AND MOTION
THAT THE COURT SCREEN
PLAINTIFF'S COMPLAINT
UNDER 28 U.S.C. § 1915A;
WAIVER OF REPLY UNDER
42 U.S.C. § 1997e(g); AND
REQUEST FOR JURY TRIAL**

32 TO PLAINTIFF IVAN VERNARD CLEVELAND:

33 PLEASE TAKE NOTICE THAT Defendants Sather, Crawford, Curry, and Abanico
34 (Defendants) waive their right to reply to the amended complaint under 42 U.S.C. § 1997e(g),
35 and request that this Court screen the amended complaint under 28 U.S.C. § 1915A.

36 **A. Background.**

37 Defendants filed motions to dismiss and for summary judgment (Docket No. 26), and the
38 Court recently gave the parties additional time to prospectively file supplemental responsive
39 briefs (Docket No. 49).

40 Defs.' Not. Mot. & Mot. Screen Compl. &
41 Waiver Reply & Request Jury Trial

42 Cleveland v. Curry, et al.
43 C 07-2809 JF (PR)

1 Cleveland has now filed an amended complaint. (Docket No. 51.) Defendants therefore
 2 waive their right to reply so that the Court may screen the amended complaint under 28 U.S.C. §
 3 1915A.

4 **B. Defendants Request that the Court Screen Plaintiff's Amended Complaint Under
 5 28 U.S.C. § 1915A.**

6 Under 28 U.S.C. § 1915A, “[t]he court shall review, before docketing, if feasible or, in any
 7 event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner
 8 seeks redress from a governmental entity or officer or employee of a governmental entity.” Upon
 9 such review, the Court shall identify cognizable claims or dismiss any or all portions of the
 10 complaint if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may
 11 be granted.” 28 U.S.C. § 1915A(b).

12 Thus, Defendants request that the Court screen Cleveland’s amended complaint and
 13 dismiss, if any, those claims and defendants the Court believes should be dismissed.

14 **C. Defendants Waive Their Right to Reply to Cleveland’s Amended Complaint.**

15 Defendants waive their right to reply to Plaintiff’s amended complaint. Under 42 U.S.C. §
 16 1997e(g), “[a]ny defendant may waive the right to reply to any action brought by a prisoner
 17 confined in any jail, prison, or other correctional facility under . . . Federal law. Notwithstanding
 18 any other law or rule of procedure, such a waiver shall not constitute an admission of the
 19 allegations contained in the complaint. No relief shall be granted to the plaintiff unless a reply
 20 has been filed.” However, “the Court may require any defendant to reply to a complaint brought
 21 under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the
 22 merits.” 42 U.S.C. § 1997e(g)(2).

23 Assuming that the Court does not dismiss the amended complaint in its entirety, Defendants
 24 request that the Court allow sixty days from the date of the Court’s order for Defendants to file
 25 their responsive pleading. If additional defendants are ordered to be served, Defendants
 26 respectfully request that, in the interest of judicial efficiency and the efficiency of the parties, the
 27 Court set one responsive pleading date sixty days after the final defendant has been served.

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1 **D. Defendants Request a Jury Trial.**

2 Defendants also request a trial by jury in this case. Fed. R. Civ. P. 38(b).

3 **E. Conclusion.**

4 Defendants respectfully request that the Court screen Cleveland's amended complaint under
5 28 U.S.C. § 1915A. To allow the Court sufficient time to complete a screening, Defendants
6 waive their right to reply to Plaintiff's amended complaint under 42 U.S.C. § 1997e(g).

7 Defendants also request a trial by jury in this case.

8

9 Dated: July 16, 2008

10 Respectfully submitted,

11 EDMUND G. BROWN JR.
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